IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2797 OF 2006

Shyamlal Bandu Kewat ..Petitioner.
Vs.
Smt.Bhanumati Widow of
Baburam Kalamnath Kewat ..Respondent.

Mr.B.K.Page, adv. for the Petitioner.
Mr.Devendra Sharma , adv. for the Respondent.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 19, 2007.

P.C.:

1. The petitioner, who is original plaintiff, claims to be a licensor and according to him, the respondent/defendant is a licensee while according to the defendant, he was a tenant. The Small Cause Court dismissed the suit and declared that the respondent is a tenant. Against that, appeal was preferred by the plaintiff. However, the appeal was dismissed on the ground that as per the pleadings of the petitioner, respondent was gratuitous licensee and, therefore, the Small Cause Court had no jurisdiction. Against that this petition is filed.

2. The learned counsel for both the parties concede that in view of the judgment of the Full Bench in **Prabhudas Damodar Kotecha & Anr. v. Manharbala Jeram Damodar & Ors. 2007(5) Bombay C.R. 1**, even when the

dispute is between licensor and a gratuitous licensee, jurisdiction will be with Small Cause Court only. In view of this authority, the learned counsel for both the parties agree that this petition may be allowed and the matter may be remanded back to the appellate bench of the Small Cause Court for hearing the appeal on its merits.

3. Therefore, the petition is allowed. The judgment and findings in appeal no.453 of 2001 are hereby set aside. The appeal is remanded back to the appellate bench of the Small Cause Court to hear and dispose off the appeal on its own merits.

4. Petition stands disposed off accordingly.

(J.H.BHATIA, J.)